

Chapter 341.  
*Search Act 1977.*

Certified on: / /20 .



INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 341.

***Search Act 1977.***

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# INDEPENDENT STATE OF PAPUA NEW GUINEA.



## AN ACT

entitled

### *Search Act 1977,*

Being an Act—

- (a) to regulate or restrict certain rights or freedoms referred to in Subdivision III.3.C (*qualified rights*) of the *Constitution*, namely—
  - (i) the freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and
  - (ii) the right to privacy conferred by Section 49 of the *Constitution*, so as to—
    - (iii) provide for searches of individuals, premises and property in certain cases; and
    - (iv) confer on persons making searches certain powers and duties; and
- (b) to abolish certain rules of common law, and for related purposes.

## PART I. – PRELIMINARY.

### 1. INTERPRETATION.

- (1) In this Act, unless the contrary intention appears—

“court” means any court, other than a Village Court, and includes a Judge or Magistrate of any court, other than a Village Court;

“craft” means—

- (a) an aircraft or part of an aircraft; or
- (b) a vessel or part of a vessel;

“information” includes a complaint for an offence;

**“place of confinement”** means a correctional institution, rural lock-up or police lock-up;

**“policeman”** means a member of the Police Force;

**“vehicle”** means any description of vehicle on wheels or runners;

**“warrant”** means a warrant issued under any law for the search of any place including premises, a vehicle, aircraft, vessel, luggage or freight.

(2) For the purposes of this Act, a person believes something on reasonable grounds if—

- (a) he personally has that belief; and
- (b) there are reasonable grounds for that belief.

## 2. APPLICATION.

<sup>1</sup>(1)<sup>2</sup> <sup>3</sup>Subject to Subsections (2) and (3), this Act applies, notwithstanding the provisions of any other law, to and in relation to any search whether by or under this Act or any other law.

(2) This Act does not apply to a search carried out under a warrant issued under the *National Intelligence Organization Act 1984*.

(3)<sup>4</sup> <sup>5</sup>This Act does not apply to a search carried out under the *Civil Aviation Act 2000*.

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<sup>1</sup> Section 2 replaced by No. 25 of 1984, s2.

<sup>2</sup> Section 2(1) amended by No 23 of 2000 s 2.

<sup>3</sup> Section 2(1) amended by No 23 of 2000 s 2.

<sup>4</sup> Section 2(3) added by No 23 of 2000 s 2.

<sup>5</sup> Section 2(3) added by No 23 of 2000 s 2.

## PART II. – SEARCHES OF THE PERSON.

### 3. CIRCUMSTANCES WHERE PERSONS MAY BE SEARCHED.

(1) Where a policeman believes on reasonable grounds that a person has in his possession—

- (a) anything that has been stolen or otherwise unlawfully obtained; or
- (b) anything used or intended to be used in the commission of an indictable offence,

he may stop and search that person in accordance with Section 4 and, where applicable, exercise the power of seizure under Section 10(1).

(2) Subject to Section 4, where a policeman believes on reasonable grounds that it is necessary to do so, he may, at the time of arresting a person, search his person, the clothing he is wearing and any property under his immediate control—

- (a) for the purpose of ascertaining whether he is concealing a firearm or other offensive weapon; or
- (b) for the purpose of preventing the loss or destruction of evidence relating to the offence for which he was arrested, and, where applicable,

may exercise the power of seizure under Section 10(2).

(3) Where a person in lawful custody is to be detained in a place of confinement he may, immediately before he is so detained, be searched at that place of confinement by a policeman or a member of the Correctional Service, as the case requires in accordance with Section 4, who may, where applicable, exercise the power of seizure under Section 10(3).

(4) The owner of a craft or a person in command of a craft or a person authorized by either of them or a policeman may in accordance with Section 4, search a person intending to board the craft and, where applicable, may exercise the power of seizure under Section 10(3).

(5) Where a person in command of a craft suspects that a person on board the craft constitutes a danger to the safety of the craft he may, or persons authorized by him may, search that person in accordance with Section 4 and, where applicable, may exercise the power of seizure under Section 10(4).

### 4. POWERS AND DUTIES RELATING TO SEARCHES OF PERSONS.

(1) Subject to this section, a person conducting a search of a person may touch the body and clothing of the person being searched.

(2) Searches of the person shall be conducted with due regard to decency.

(3) A person conducting a search of another person shall not use any greater force than is reasonable in the circumstances.

(4) Subject to Subsection (5), a search of a female shall only be carried out by or in the presence of an adult female.

(5) Where a policeman has reasonable grounds to believe that a female he has arrested is carrying a firearm or other offensive weapon he may, with due regard to decency, seize the weapon.

(6) Subsection (5) does not justify the use of greater force than is reasonable in the circumstances.

## PART III. – SEARCHES OF PREMISES, AIRCRAFT, ETC.

### *Division 1.*

#### *Searches without Warrant.*

##### 5. CIRCUMSTANCES WHERE SEARCH MAY BE MADE.

(1) Where a policeman has reasonable grounds to believe that a vehicle or anything in a vehicle—

- (a) has been stolen or otherwise unlawfully obtained; or
- (b) has been used or is intended to be used in the commission of an indictable offence,

he may stop and search that vehicle and, where applicable, exercise the power of seizure under Section 10(1).

(2) Where a policeman believes on reasonable grounds that a person has in a vehicle that he is using at the time, a firearm or other offensive weapon, he may search the vehicle for the firearm or offensive weapon and, where applicable, exercise the power of seizure under Section 10(2).

(3) Where a policeman believes on reasonable grounds that it is necessary to do so, he may, at the time of arresting a person, search any vehicle the arrested person was using at the time of his arrest, for the purpose of preventing the loss or destruction of evidence relating to the offence for which he was arrested and, where applicable, may exercise the power of seizure under Section 10(2).

(4) Where the owner or the person in command of a craft or a policeman has reasonable grounds to suspect that a situation has arisen or is likely to arise involving the safety of the craft he may or persons authorized by him may search—

- (a) the craft; and
- (b) any luggage and freight on board or about to be placed on board the craft, and, where applicable, may exercise the power of seizure under Section 10(4).

(5) Where a policeman is in immediate pursuit of a person whom he believes on reasonable grounds to have committed an indictable offence, he may, or persons authorized by him may, search any building or place in which he believes on reasonable grounds that the person being pursued—

- (a) is concealed; or
- (b) has, in the course of his pursuit, concealed or deposited anything.

### *Division 2.*

#### *Search Warrants.*

##### 6. ISSUE OF WARRANTS.

(1) If a court, other than a Local Court, is satisfied by information on oath that there are reasonable grounds for suspecting that there is in any building, craft, vehicle or place—

- (a) any thing with respect to which any offence has been or is believed on reasonable grounds to have been committed; or
- (b) any thing as to which there are reasonable grounds for believing it is likely to afford evidence of the commission of any such offence; or
- (c) any thing as to which there are reasonable grounds for believing is intended to be used to commit any such offence,

it may issue a warrant to search that building, craft, vehicle or place.

(2) If a court is satisfied by information on oath by a commissioned officer of the Police Force that there are reasonable grounds for suspecting that there is in any building or buildings in a village or in any part of a village or village garden any thing specified in Subsection (1)(a), (b) or (c), it may issue a warrant to search the building, buildings, village, part of the village or village garden.

(3) Where a warrant has been issued under Subsection (2) the person, policeman or policemen to whom the warrant is directed shall, where it is practicable to do so, before executing the warrant, endeavour to obtain the co-operation of those persons who, by custom, are regarded as the leaders of the village in respect of which the warrant has been issued.

(4) Subsection (1) or (2) does not justify the use of greater force than is reasonable in the circumstances.

## **7. DIRECTION OF WARRANT.**

A warrant may be directed to all or any of the following:—

- (a) to a named person;
- (b) to the officer for the time being in charge of police in a particular province or place;
- (c) to all members of the Police Force.

## **8. FORM OF WARRANT.**

A warrant shall—

- (a) describe the place to be searched; and
- (b) state briefly the offence or matter of the information on which it is founded; and
- (c) order the person to whom it is directed to search the place and seize any thing he may find in that place which relates—
  - (i) to the offence or the matter of the information on which the warrant is founded; or
  - (ii) to any other offence.

*Division 3.**Powers in Aid of Manner of Search.*

**9. POWERS AND DUTIES RELATING TO SEARCHES OF PREMISES, CONTAINERS, ETC.**

(1) A person conducting a search under Sections 5 and 6 in any place (other than in a baggage or freight container) and his assistants (if any)–

- (a) have power–
  - (i) to enter and be in that place for the duration of the search and for that purpose to use such force as is reasonably necessary; and
  - (ii) to the least extent necessary with the least amount of damage—to interfere with the structure of the place for the purpose of search; and
  - (iii) to touch any article in that place; and
  - (iv) to stop and search any person found in that place in accordance with Section 4; and
- (b) shall, within a reasonable period after the conclusion of the search, restore the place or cause the place to be restored as nearly as possible to the same state of cleanliness and neatness that existed immediately before the commencement of the search.

(2) A person conducting a search under Sections 5 and 6 in any baggage or freight container and his assistants (if any)–

- (a) have power–
  - (i) to enter and be in the place where the baggage or freight container is situated and for that purpose to use such force as is reasonably necessary; and
  - (ii) to the least extent necessary and with the least amount of damage—to interfere with the structure of the container for the purpose of search; and
  - (iii) touch any article in the container; and
- (b) shall, within a reasonable period after the conclusion of the search, restore the container and any article in the container as nearly as possible to the same state of cleanliness and neatness that existed immediately before the commencement of the search.

(3) Where a search of a container under Subsection (2) cannot otherwise be made, a person conducting a search referred to in that subsection and his assistants may destroy the container for the purpose of search.

(4) This section does not require the restoration of the structure of any place or container interfered with by virtue of the powers conferred by this section.

*Division 4.**Property Located During Search.***10. CERTAIN PROPERTY MAY BE SEIZED.**

(1) Where, during the course of a search that is authorized by this Act, a policeman finds any thing that he believes on reasonable grounds—

- (a) has been stolen or otherwise unlawfully obtained; or
- (b) has been used or is intended to be used in the commission of any indictable offence; or
- (c) will provide evidence of an offence,

he may seize that thing.

(2) For the purposes of Sections 3(2), 5(2) and 5(3), where the person searching finds a firearm or offensive weapon he may seize it.

(3) For the purposes of Sections 3(3) and 3(4), where the person searching finds any thing which in his opinion may be dangerous or inexpedient to leave in the possession of the person searched he may seize that thing.

(4) For the purposes of Sections 3(5) and 5(4), where the person searching finds any thing that in his opinion—

- (a) constitutes a danger or is capable of constituting a danger to the safety of the craft; or
- (b) is capable of being used to threaten a person on the craft,

he may seize that thing.

**11. THINGS SEIZED MAY BE HANDED TO POLICE, ETC.**

(1) Where a person seizes any thing under this Act and in his opinion that thing may be evidence relating to an offence he may hand that thing to a policeman.

(2) Where the person in command of a craft is of the opinion that property seized under this Act, on board the craft during the journey may be evidence relating to an offence committed during that journey on the craft he may on behalf of the owner of the craft give possession of that property to the person he believes on reasonable grounds is a representative of the authority responsible for law enforcement in the country where the offence will be tried.

**12. POLICE TO MAINTAIN RECORD OF THINGS SEIZED, ETC.**

Where any thing is seized by a policeman under this Act or is handed to a policeman, he shall enter in a permanent register of property—

- (a) a full description of the thing including where appropriate, a note of any identification marks; and

- (b) the time and date the thing was seized or received by him and in the case of things received by him the name and address of the person who handed the thing to him; and
- (c) the place and the person from whom the thing was seized; and
- (d) other details as are prescribed.

### 13. POSSESSION OF CERTAIN PROPERTY.

(1) Where any thing is seized under this Act by a policeman or is handed to policeman, the thing shall be deemed to be in the possession of the State.

(2) Where any thing is seized under Section 10(4) by a person, other than a policeman, the thing shall be deemed to be in the possession of the owner of the craft.

(3) Where any thing is seized under this Act, other than under Section 10(4), by a person other than a policeman—

- (a) in the course of his employment—the thing shall be deemed to be in the possession of his employer; or
- (b) in any other case—the thing shall be deemed to be in the possession of that person.

(4) Anything referred to in Subsection (1), (2) or (3) may be retained in possession in accordance with that subsection for the purpose of examination and investigation and in the event that a person is charged with an offence in relation to that thing or in relation to which that thing is evidence the thing may, subject to any order to the contrary of a court, be retained in that possession until the charge and any subsequent proceedings on that charge have been determined.

### 14. DISPOSAL OF THINGS SEIZED UNDER COURT ORDER.

(1) In this section—

**“forgery equipment”** means—

- (a) any forged bank note, or any special paper, revenue paper, frame, mould, instrument, plate, wood, stone, material or other thing, of which the possession without lawful excuse is an offence; or
- (b) any counterfeit coin, or any instrument, machine, tool, or other thing used or intended to be used for the purpose of coining, of which the possession with knowledge of its nature and without lawful excuse is an offence;

**“seized property”** means any thing, other than forgery equipment, that is seized by virtue of a power conferred by this Act.

(2) A court may order, on an application made to it by any person, that forgery equipment seized by virtue of a power conferred by this Act be forfeited, defaced or destroyed.

(3) Subject to Subsection (4), where any proceedings for an offence relating to seized property or in which seized property is used as evidence have been determined a court may order—

- (a) that the seized property be delivered to the person appearing to the court to be entitled to it; or
- (b) that the seized property be otherwise disposed of in such manner as the court thinks fit.

(4) Where a person is convicted on an offence relating to seized property and an order has been made under Subsection (3), the operation of that order is suspended until the determination of any appeal.

(5) On the hearing of any appeal the court may annul or vary an order made under Subsection (3).

## **15. DISPOSAL OF THINGS SEIZED IN CERTAIN CASES.**

(1) Where a policeman seizes any thing in a correctional institution under Section 10(3) he may hand that thing to a correctional officer at the institution.

(2) Where a person seizes any thing on board a craft under Section 10(4), he may throw away, destroy or otherwise deal with that thing so that the craft and persons on board the craft are no longer endangered.

## PART IV. – MISCELLANEOUS.

### **16. POWERS OF SEARCH CONFERRED BY OTHER LAWS.**

The provisions of this Act that specify the circumstances in which a person may be searched are in addition to and not in derogation of a provision of any other Act or subordinate enactment that confers a power of search.

### **17. CIVIL REMEDY FOR WRONGFUL EXERCISE OF POWERS CONFERRED BY THIS ACT.**

(1) A person who—

- (a) exercises a power to make a search in breach of this Act; or
- (b) exercises a power conferred by this Act, other than a power of search, in breach of this Act; or
- (c) performs a duty imposed by this Act in breach of this Act; or
- (d) fails or refuses to perform a duty imposed by this Act,

may be liable in damages to the person aggrieved by that breach.

(2) An action under Subsection (1) may be brought—

- (a) in the National Court; or
- (b) in a District Court,

and in the case of a District Court the court has jurisdiction within the limits prescribed by Section 21 of the *District Courts Act 1963*.

(3) In an action under Subsection (1) a court may award exemplary damages.

(4) The provisions of this section are in addition to and not in derogation of the provisions of the Constitution or any other law dealing with the enforcement of any constitutional right, power, duty, restriction or prohibition.

### **18. CERTAIN ACTS DEEMED TO BE WITHIN COURSE OF EMPLOYMENT.**

For the purposes of any civil proceeding, where the making of a search would otherwise be within the scope of a person's employment, the mere non-compliance by an employee with a provision of this Act does not, of itself, take any act of the employee, committed during the course of the search, outside the scope of his employment.

### **19. ABOLITION OF CERTAIN COMMON LAW POWERS AND DUTIES.**

(1) All powers at common law to issue search warrants are abolished.

(2) All duties and responsibilities imposed by the common law in relation to searches and search warrants are abolished.

**20. REGULATIONS.**

The Head of State, acting on advice, may make regulations not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Office of Legislative Counsel, PNG